

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL DANTE GARRETT

Petitioner,

v.

NATHANIEL QUARTERMAN, Director
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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CIVIL ACTION NO.
3:04-CV-957-P

ORDER

This is a writ of habeas corpus case filed by a state inmate pursuant to 28 U.S.C. § 2254. The Magistrate Judge filed her Findings and Conclusions on September 29, 2006. Respondent filed objections on October 3, 2006 objecting to the magistrate judge's failure to rule on his defense that this petition is time-barred. The magistrate judge made no ruling on the timeliness of the petition but instead proceeded directly to the merits of the claims. Petitioner timely filed objections on October 17, 2006.

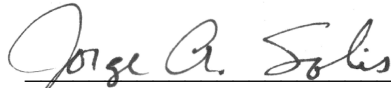
After review of the file, the magistrate judge's report, and respondent's and petitioner's objections, the court overrules respondent's and petitioner's objections. The issue of whether a habeas petition is time-barred is not a jurisdictional issue, but rather is a defense. *Davis v. Johnson*, 158 F.3d 806,811 (5th Cir. 1998). Respondent cites no authority which requires that limitations defenses be resolved ahead of other issues. Hence, the court finds no error on the

part of the magistrate judge in deciding the claims on the merits rather than deciding the timeliness issue.¹

Petitioner's objections address issues that were thoroughly discussed by the magistrate judge in her report. Petitioner's objections are overruled.²

After reviewing all the relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the Magistrate Judge, respondent's objections, and petitioner's objections, the court accepts the Findings, Conclusions, and Recommendation of the Magistrate Judge and adopts them as the findings of this court.

Signed this 7th day of November. 2006.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

¹ Respondent states he is filing the objections to preserve the issue for appeal. However, the magistrate judge made no findings, conclusions or recommendations regarding the limitations issue. Thus, this court treats respondent's objections as objecting to the magistrate judge's failure to rule on the limitations defense.

² Petitioner filed a Motion for Relief from Judgment on October 30, 2006. However, since the court vacated its previous judgment by order of October 23, 2006, this motion is Denied as moot.